

ROCKINGHAM, ss

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket Nos. 07-S-1028-1031
State of New Hampshire

v.

John A. Brooks

**DEFENDANT'S MOTION TO COMPEL
COMPLIANCE WITH DISCOVERY ORDERS**

Defendant John A. Brooks respectfully requests that this Court issue an order directing the State of New Hampshire to immediately comply with the discovery obligations established under Superior Court Rule 98, and this Court's May 16, 2007 Scheduling Order. More than seven months have passed since Defendant was first charged. Although this case arises from an investigation that began two years ago, the State has released only a limited number of documents, and has not provided anything remotely close to the "open file discovery" mandated by the Court. Furthermore, the prosecution has advised that the State Police cannot commit to a date certain for producing all police reports and other investigative materials that purportedly support the Capital Murder charges now pending against Defendant. Defendant thus brings this Motion as a last resort, in an effort to avoid further delays which will prejudice defense counsel's ability to prepare their defense. In support of this Motion, Defendant submits as follows:

1. Defendant was first charged in connection with this matter on November 16, 2006, when he was arrested at his home in Las Vegas, Nevada, on a complaint charging him with conspiracy to commit murder in connection with the 2005 death of Jack Reid. Defendants waived extradition, and on December 7, 2006, was arraigned in Auburn District Court on conspiracy to commit murder and first degree murder charges. Defendant, who has no prior criminal record, has been held without bail for more than seven months.

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2. On April 26, 2007, the State obtained indictments charging Defendant with two counts of Capital Murder, First Degree Murder, and Conspiracy to Commit Capital Murder. The Attorney General has publicly declared, in a news conference, that she intends to ask this Court to order that the Defendant be put to death.

3. On January 9, 2007, before the State disclosed its decision elevate this matter to a capital case, prosecutors agreed to produce certain specific categories of discovery in exchange for Defendant's agreement to waive a probable cause hearing in Auburn District Court. Specifically, the State agreed to produce copies of search warrants, affidavits, and returns, copies of possessed property reports, copies of the laboratory reports, a copy of the Massachusetts Medical Examiners' files, photographs, recorded interviews, and certain other specific items.

4. In January and March 2007, the State did, in fact, produce certain categories of discovery, including digitally recorded interviews of four individuals: Robin Knight, Joseph Vrooman, Mike Benton, and another witness (not charged in this matter). However, the State has provided no recordings of, and no reports concerning, witness interviews, witness statements, or witness testimony conducted from November 30, 2006 to the present – a period spanning six months – even though the State's investigation unquestionably continued through that time. These materials are no doubt at the heart of the State's Capital Murder case, but the defense has yet to receive any of them.

5. On May 16, 2007, in connection with the Defendant's entry of a plea of not guilty and waiver of formal arraignment, this Court issued a Scheduling Order which directly and specifically imposes particular discovery obligations on the State. Specifically, Paragraph 2 of that Order states as follows:

The State is hereby order to provide **COMPLETE OPEN FILE DISCOVERY** as provided by the Superior Court Rules and within

such time as required given the dates set forth herein. In addition, within THIRTY DAYS of the starting date the State shall give written notice to the Defendant of its intent withhold any portion of its files.¹

(Emphasis in original.)

6. Rule 98(a)(2) also required the State to provide full discovery within 30 days of the entry of a not guilty plea. This deadline passed on June 15, 2007, without so much as a trickle of new information being released by the State.

7. Despite the clear language of the Court's May 16, 2007 Order and of Rule 98, the State has provided Defendant with no discovery since the date that Order issued. The State also has not provided notice of its intent to withhold any portion of its file, as it was required to do by June 16, 2007 if it planned to withhold any portion of the file. Consequently, the defense must assume that the absence of discovery is attributable solely to the State's failure to heed the deadlines imposed by the Court's Order and Rule 98.

8. While the State has yet to produce evidence allegedly supporting its Capital Murder charges, the Attorney General's Office has made public its views of that evidence, and, on May 13, 2007, was quoted in the Associated Press as stating that the evidence purportedly reflects "an incredible amount of premeditation. A very brutal murder."

9. The lead prosecutor in this case, Charles Keefe, has worked cooperatively with undersigned counsel to address these issues and, the defense believes, has made diligent efforts to obtain the outstanding materials. The problem apparently centers on the fact that the Attorney General's office has not obtained discovery from the State Police. Attorney Keefe has advised that the State expects to produce about 75 percent of the discovery materials by June 22, 2007.

¹ The Court's May 16, 2007 Order also required the State to provide a written plea offer to Defendant by May 26, 2007. Although Defendant maintains his innocence of all charges, and expects that any charges that survive pre-trial motions will in fact be tried, the defense feels compelled to bring to the Court's attention the State's failure to comply with this part of the Court's Order as well.

However, Attorney Keefe could not provide any estimate as to when the remaining 25 percent of the discovery will be delivered, and it appears that the State Police may not even have provided that discovery to the Attorney General's office--notwithstanding the clear mandates of this Court's May 16, 2007 order and the Rule 98.

10. Compliance with discovery rules is important in every case, and delays by the State in complying with a court order to furnish evidence to the accused should not be condoned. As our Supreme Court has observed:

Public prosecutors must be held to a high standard of conduct. Delay in complying with a court order to furnish evidence to the accused, for the purpose of making it less useful to him, cannot be condoned. Such conduct involving evidence favorable to the accused strikes at the very heart of the adversary system, due process, and the guarantee of effective assistance of counsel.

State v. Arthur, 118 N.H. 561, 563 (1978).

11. Without question, the State's obligation to comply with its discovery obligations is critically important in this Capital Murder case, where the Attorney General's Office has publicly commented on its view of the evidence allegedly supporting the charge, and proclaimed its intention to seek Mr. Brooks' execution. There can be no excuse, in a case where the prosecution seeks a defendant's execution, for the State to ignore its obligation to provide basic information to the defense on the schedule the Court established.

12. Preventing the Defendant from obtaining this basic information in a timely manner is fundamentally unfair -- the equivalent of asking him to enter a fight for his life with one tied behind his back. The Court should not countenance this conduct.

13. Undersigned counsel conferred with the State, by Attorney Keefe, prior to filing the instant Motion. Attorney Keefe advised that the State takes no position with respect to the Motion.

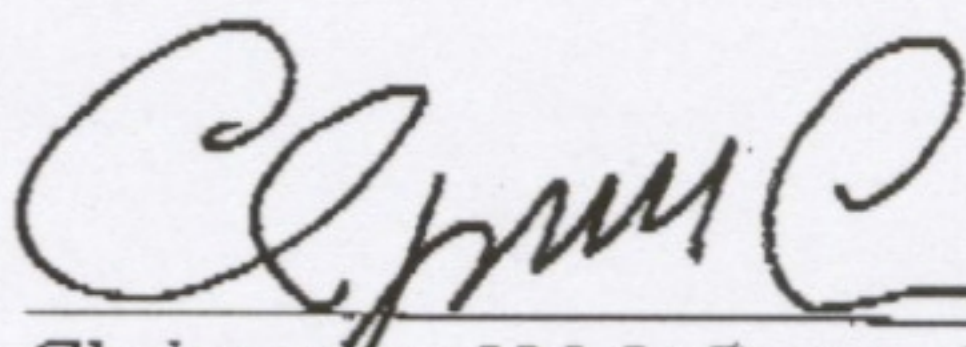
WHEREFORE, Defendant respectfully requests the Court issue an order:

- A. Directing the State to provide complete and full discovery to the Defendant forthwith and, in any event, no later than June 25, 2007; or
- B. In the event that the State cannot represent that it has provided all discovery by that date, directing the State to explain why the Court should not order an appropriate remedy--such as release of the Defendant on reasonable bail; and
- C. Granting such other relief as is just and proper.

Respectfully submitted,

JOHN A. BROOKS

By his attorneys



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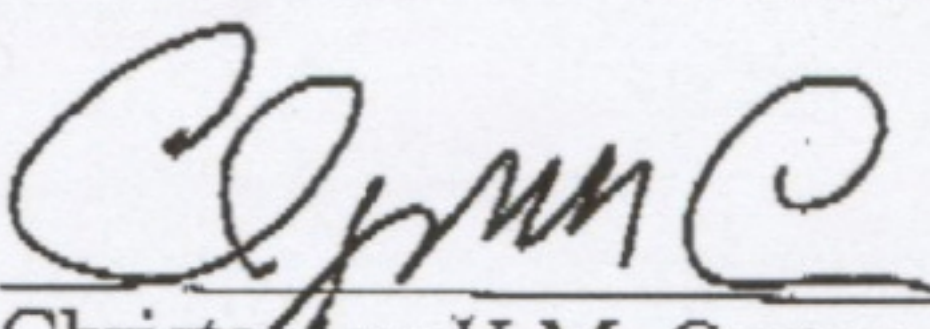
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Dated: June 20, 2007

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been delivered this date to all counsel of record.



Christopher H.M. Carter

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